

IN THE CHANCERY COURT OF THE STATE OF TENNESSEE  
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

2007 JUN -5 AM 8:21

LESLIE A. NEWMAN, )  
Commissioner of Commerce and Insurance )  
for the State of Tennessee, )

Petitioner, )

v. )

No. 07-1163-IV

NATIONAL FOUNDATION OF )  
AMERICA, a Tennessee corporation, )  
RICHARD K. OLIVE, an individual; )  
SUSAN L. OLIVE, an individual; )  
BREANNA MCINTYRE, an individual, )  
THEODORE S. LITTLE, an individual, )  
HUNTER DANIEL, an individual, )

Respondents. )

DAVIDSON CO. CHANCERY CL.

D.C. & M.

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**FIRST AMENDED PETITION**

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Leslie A. Newman, Commissioner of the Tennessee Department of Commerce and Insurance, by and through the Attorney General and Reporter, pursuant to Rule 15 of the Tenn. R. Civ. P., hereby amends the petition by incorporating the original Verified Petition for Appointment of a Receiver herein in its entirety and by adding the following:

ALTERNATIVE NATURE OF THE ACTION<sup>1</sup>

80. Alternatively, the Commissioner brings this action for an injunction, the appointment of a receiver and other appropriate equitable relief, pursuant to Tenn. Code Ann. §

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<sup>1</sup> As set forth in the Verified Petition, it is the Commissioner's position, first and foremost, that NFOA is an unauthorized insurer that should be liquidated under Tenn. Code Ann. §§ 56-9-101. *et seq.*, because its condition is hazardous financially, or otherwise, to its policyholders, creditors, and the public generally. But, because NFOA's Installment Plan Agreement is not issued by an authorized insurance company, the respondents have violated both this State's statutes regulating insurance and those regulating the sale of securities. Accordingly, the Commissioner files this First Amended Petition as an alternative pleading although it is not mutually exclusive relief.

48-2-119, to protect the public from further violations of the Tennessee Securities Act of 1980 (Tenn. Code Ann. §§ 48-2-101 through 48-2-126) ("Securities Act") by the Respondents. As more fully alleged below, the Respondents are selling unregistered securities in violation of Tenn. Code Ann. § 48-2-104, have transacted business as unregistered securities broker-dealers or agents in violation of Tenn. Code Ann. § 48-2-109(a) and have committed fraud in connection with the sale of securities in violation of Tenn. Code Ann. § 48-2-121(a).

81. Injunctive relief is necessary and appropriate because there is a substantial likelihood that the Respondents have violated, and will continue to violate, the Securities Act unless they are restrained by the Court.

#### JURISDICTION AND VENUE

82. This Court has jurisdiction over the subject matter of and parties to this action pursuant to Tenn. Code Ann. § 48-2-119.

83. Venue is proper in Davidson County, pursuant to Tenn. Code Ann. § 48-2-119.

#### PARTIES

84. Plaintiff Leslie A. Newman is the Commissioner of the Tennessee Department of Commerce and Insurance. She brings this action solely in her official capacity and as the administrator of the Act. *See* Tenn. Code Ann. § 48-2-115.

85. Paragraphs 6-16 in the original Petition are hereby adopted and incorporated herein by reference, except that the Commissioner is filing a notice of voluntary dismissal as to respondent Kenny Marks.

### GENERAL ALLEGATIONS

86. Respondents NFOA, Richard Olive, and Susan Olive, are presently conducting business from offices that are located at 1308 Buckingham Circle, Franklin, Tennessee, and 1100 Mission Court, Franklin, Tennessee.

87. Sometime on or before February 2006, Respondents and others acting in concert with them, began offering and selling what they have sometimes termed a "Tax Deductible Installment Plan" (hereinafter, "Plan"). Such Plan is marketed as an opportunity to obtain substantial economic returns, tax benefits and, at the same time, enable others to perform works of charity and philanthropy. Under the terms of the offering, Respondents are using the funds they receive as the risk capital of the enterprise. In addition, all of the economic returns that investors are to receive are to come through the efforts of others.

88. Respondents have directed their marketing efforts primarily toward retirees. They have publicly advertised their Plan on the Internet and have sold the product through agents, some of whom hold themselves out as having specialized expertise in the area of investment advice for retirees.

### SALE OF UNREGISTERED SECURITIES

89. The Commissioner realleges all matters set forth in paragraphs 1 through 88 and incorporates them herein by reference. In the alternative, the Commissioner also alleges:

90. The Plan that is being offered and sold to retirees is either an investment contract or an evidence of indebtedness. As such, it is a security as that term is defined in Tenn. Code

Ann. § 48-2-102 (16). As securities, such installment contracts are required to be registered with the Commissioner before they can be lawfully sold in Tennessee. Such installment contracts are not registered with the Commissioner and by selling them in Tennessee, Respondents have violated, and are continuing to violate Tenn. Code Ann. § 48-2-104.

#### ENGAGING IN BUSINESS AS UNREGISTERED SECURITIES BROKER-DEALERS OR AGENTS

91. The Commissioner realleges all matters set forth in paragraphs 1 through 90 and incorporates them herein by reference. In the alternative, the Commissioner also alleges:

92. By engaging in the business of offering and selling Plans to members of the investing public, Respondents have transacted business as securities broker-dealers and/or agents as those terms are defined in Tenn. Code Ann. §§ 48-2-102(3) and 102(4). Respondents are not registered to transact business as securities broker-dealers or agents from or into Tennessee. Respondents have violated Tenn. Code Ann. § 48-2-109(a) by transacting such business without being duly registered.

93. Respondents are likely to continue to violate Tenn. Code Ann. § 48-2-109(a) unless they are restrained by the Court.

#### EMPLOYMENT OF UNREGISTERED AGENTS

94. The Commissioner realleges all matters set forth in paragraphs 1 through 93 and incorporates them herein by reference. In the alternative, the Commissioner also alleges:

95. Respondents NFOA, and Richard and Susan Olive employed agents to offer and sell Plans to investors. Such agents are located in Tennessee and other states. None of the agents

is registered to transact business as securities agents of NFOA. By employing unregistered agents to sell Plans, NFOA and the Olives have violated Tenn. Code Ann. § 48-2-109(b).

96. NFOA and the Olives are likely to continue to violate Tenn. Code Ann. § 48-2-109(b) unless they are restrained by the Court.

#### UNREGISTERED INVESTMENT ADVISORS

97. The Commissioner realleges all matters set forth in paragraphs 1 through 96 and incorporates them herein by reference. In the alternative, the Commissioner also alleges:

98. In connection with the sale of Plans, Respondents regularly engaged in the business of advising their clients on the value of securities they held and or intended to purchase. Such advice included discussions related to the advisability of selling securities to fund the purchase of Plans. By engaging in the business of providing such advice, Respondents transacted business as investment advisors. At the time defendants transacted such business, they were not effectively registered. Respondents therefore violated Tenn. Code Ann. § 48-2-109(c).

99. Respondents are likely to continue to violate Tenn. Code Ann. § 48-2-109(c) unless they are restrained by the Court.

#### SECURITIES FRAUD

100. The Commissioner realleges all matters set forth in paragraphs 1 through 99 and incorporates them herein by reference. In the alternative, the Commissioner also alleges:

101. Respondents have employed a device, scheme or artifice to defraud investors in connection with the sale of the installment contracts. In furtherance of such device, scheme or artifice, Respondents have engaged in various acts, including but not limited to:

101.1. Representing that NFOA is a tax exempt charitable organization under section 501(c)(3) of the Internal Revenue Code when they knew that they had applied for such determination by the IRS although it had not yet been granted.

101.2. Representing to investors that the product they are offering is and will be tax deductible. Such representation is false because NFOA is not a tax exempt charitable organization under § 501(c)(3) and without the charitable exemption, payments to NFOA are not tax deductible.

101.3. Omitting to disclose that NFOA's principals, Richard Olive and Susan Olive, have had limited experience in handling investments.

101.4. Omitting to disclose to contract holders and investors the risks associated with transferring the ownership of an asset.

101.5. Omitting to disclose that surrender charges and sales commissions would cause a loss of approximately twenty percent (20%) of the investor's principal.

101.6. Failing to disclose to contract holders that the installment contracts offered and sold by NFOA are not protected by a guaranty and are subject to the risks of the business.

101.7. Failing to disclose that NFOA's principals, Richard and Susan Olive, have been using NFOA's funds more for their personal benefit than for the charitable works that are described in their internet web site and other offering materials.

102. By employing such a device, scheme or artifice in connection with the sale of securities, Respondents violated Tenn. Code Ann. § 48-2-121(a)(1).

103. Unless they are restrained by the Court, there is a substantial likelihood that Respondents will continue to violate Tenn. Code Ann. § 48-2-121.

### PRAYER FOR RELIEF

Wherefore, premises considered, the Commissioner incorporates the prayer for relief contained in the Petition for Liquidation and further prays:

104. That this Court, pursuant to the Court's inherent equity power, and Tenn. Code Ann. § 48-2-119(a), restrain and temporarily and permanently enjoin all further business activities by Respondents in contravention of State law and as described in this amended petition.

105. That this Court temporarily and permanently enjoin all persons, including Respondents, from disposing of, transferring, relocating, dissipating or otherwise altering the status of any of NFOA's assets, books, or records, or assets, books and records controlled by such persons, without prior approval of this Court pursuant to Tenn. Code Ann. § 48-2-119.

106. That this Court adjudge and decree that Respondents have engaged in the aforesaid acts and practices in violation of the Tennessee Securities Act of 1980.

107. For the appointment of a receiver with all powers and duties the Court directs. Said receiver should also be empowered to take other action required to preserve the corporate assets wherever existing, and carry on the business until a full hearing can be held.

108. For an order of disgorgement and/or restitution, or other proper equitable relief, as determined to be necessary, pursuant to Tenn. Code Ann. § 48-2-119(b).

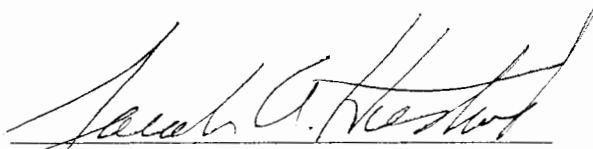
109. That this Court assess all costs of this action against Respondents, for which execution may issue if necessary.

110. That this Court award the Commissioner such other and further relief to which she may be entitled.

**THIS IS THE SECOND, OR AMENDED, APPLICATION FOR  
EXTRAORDINARY RELIEF IN THIS PROCEEDING.**

Respectfully submitted,

ROBERT E. COOPER, JR. (BPR 10934)  
Attorney General and Reporter



SARAH A. HIESTAND (BPR 14217)

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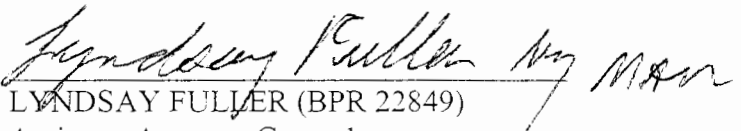
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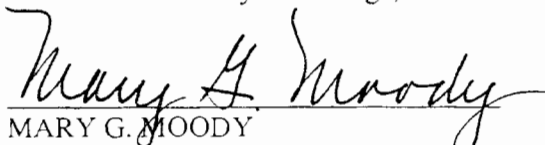
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VERIFICATION

STATE OF TENNESSEE)  
COUNTY OF DAVIDSON)

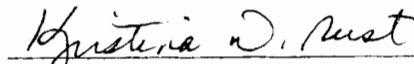
1. I, Mary G. Moody, Deputy Commissioner of Commerce and Insurance for the State of Tennessee, have been delegated authority to act for the Commissioner when called upon to do so.

2. I have read the foregoing Verified First Amended Petition and swear that the information contained therein is true and correct to the best of my knowledge, information and belief.

  
MARY G. MOODY

Deputy Commissioner of Commerce and Insurance  
for the State of Tennessee

SWORN TO AND SUBSCRIBED before me on this 4<sup>TH</sup> day of June,  
2007.



NOTARY PUBLIC

My Commission Expires: 7/19/08



**CERTIFICATE OF SERVICE**

I hereby certify, this 5th day of June 2007, that the foregoing First Amended Petition is being served by U.S. mail, postage prepaid, to the parties and interested entities listed on the attached service list.

  
\_\_\_\_\_  
SARAH A. HIESTAND  
Senior Counsel

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